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IN THE

Supreme Court of the United States

October Term, 1946
No. 307.

PARE LORENTZ,

Petitioner,

vs.

RKO RADIO PICTURES, INC.,

Respondent.

REPLY BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of Case.

Petitioner on July 31, 1941, entered into a written contract with respondent, a producer of motion pictures, wherein petitioner agreed to perform personal services as a producer-director of two motion pictures. Before the first picture was completed, petitioner was discharged. He brought suit claiming his discharge was wrongful and seeking to recover the damages which he alleged he was entitled to under various provisions of the written contract.

The first twelve counts of his complaint seek either the recovery of damages arising out of breaches of par-

ticular provisions of the contract, or the enforcement of rights which he claims he has under specific provisions of the contract. The thirteenth count of the complaint seeks the recovery of damages for defamation, based upon certain newspaper articles for which petitioner claims respondent was responsible.

The District Court granted a motion for summary judgment as to the second, tenth, eleventh and twelfth counts in the complaint. The order granting the motion was based upon the ground that under a specific provision in the written contract between the parties, petitioner had expressly waived and released any right of recovery upon the claims set forth in such counts. The District Court granted a motion to dismiss as to the thirteenth count upon the ground that the language used in the alleged defamatory article was not, in fact, defamatory. Judgment dismissing each of the said counts followed and said judgment was affirmed by the Circuit Court of Appeals for the Ninth Circuit.

ARGUMENT.

Neither the petition nor the brief set forth any special or important reasons for the exercise of judicial discretion in granting the writ herein sought.

I.

The Case Involves No Question of Importance Which Is in the Public Interest to Have Decided by This Court of Last Resort. The Petition Is Merely an Attempt to Secure Another Hearing for the Party Defeated in the Circuit Court of Appeals. The Writ Will Not Issue for Such Purpose.—Rule 38(5).

Mangnum Import Co. v. DeSpoturno Coty, 262 U. S. 159, 163, 67 L. Ed. 922, 924;

Deputy v. DuPont, 308 U. S. 488, 500, 84 L. Ed. 416, 425 (Dis. opinion Roberts).

The liability of the defendant is asserted upon two grounds—first, by the alleged breaches of the written contract between the parties, and second, by the utterance of alleged defamatory language. The question raised with respect to the first matter is whether the court was justified in granting the motion for summary judgment, in view of the particular language contained in the contract between the parties. The question raised with respect to the second matter was whether the particular language used, under the extrinsic circumstances disclosed by the complaint, was defamatory. Each of these questions is of importance only to the immediate parties involved.

A decision by this court will determine no question of public interest and would constitute merely a review of the action of the District Court and the Circuit Court of Appeals in construing the contractual provision in favor of the respondent and in determining that the language was not defamatory.

II.

The Decision Presents No Conflict With Decisions of Other Circuit Courts of Appeals.

The Circuit Court of Appeals pronounces this rule:

> "The court, in seeking to determine the possible meaning of the published language in the light of extrinsic facts must look to see if the words are reasonably susceptible of or whether they could reasonably be understood to have the defamatory meaning suggested by the innuendo." [Record 163.]

In the principal case relied upon by petitioners (*Meyerson v. Hurlburt,* 98 F. (2d) 232) the court at page 234 cites this language from *Fahy v. Melrose Free Press,* 10 N. E. (2d) (Mass.) 187:

> "It is only when the court can say that the publication is not reasonably capable of any defamatory meaning, and cannot reasonably be understood in any defamatory sense, that the court can rule, as a matter of law, that the publication is not libelous."

It is obvious that the language of the two Circuits is in subsantial accord. The Circuit Court of Appeals in this case did not, as asserted by petitioner, determine that the language was susceptible of two meanings—one innocent and the other defamatory—and that it was the function of the court to determine which meaning was intended.

On the contrary, the court determined that the language was not reasonably susceptible of a defamatory meaning, and under such circumstances, as held by all of the cases from other circuits cited by petitioner, was justified in dismissing the complaint.

III.

Even Though the Case Presented a Conflict Among Circuits on a Question Controlled by State Law, This Is Not, in Itself, a Reason for Granting a Writ.

Ruhlin v. New York Life Ins. Co., 304 U. S. 202, 206, 82 L. Ed. 1290, 1292.

IV.

The Question Is Not One in Which the Circuit Court of Appeals Has Decided (a) an Important Question of Local Law; (b) in a Way Probably in Conflict With Applicable Local Decisions.

(a) This point is presented under I above.

(b) The decision of the Circuit Court of Appeals presents no conflict with applicable local decisions.

(1) The Count for Defamation.

The Circuit Court of Appeals determined that the alleged defamatory language was not reasonably susceptible of and could not reasonably be understood to have the defamatory meaning suggested by the innuendo. California courts have uniformly held it to be the function of the court to determine, in the light of the pleaded extrinsic facts, whether the words are reasonably susceptible of (*Chavez v. Times Mirror Co.*, 185 Cal. 20; *Jackson v. Underwriters Report, Inc.*, 21 Cal. App. (2d)

591) or could reasonably be understood to have (*Bates v. Campbell,* 213 Cal. 438; *Jarman v. Rea,* 137 Cal. 339; *Washer v. Bank of America,* 21 Cal. (2d) 822), the defamatory meaning suggested by the innuendo.

(2) The Counts as to Which Summary Judgment Was Granted.

Summary judgment was granted upon the construction placed upon and the meaning given to a particular contractual provision and there are no local decisions construing the same or any substantially similar contract. The cases cited by petitioner in his brief present no parallel situation. Each of such cases is one in which a release of an existing liability was executed or a covenant not to sue given with respect to an existing liability, and upon a consideration which was not thereafter furnished. The release in this case was part of the original contract between the parties, supported by the consideration moving to petitioner under that contract.

It is respectfully submitted that the petition for writ of certiorari should be denied.

Dated: August 20, 1946.

Guy Knupp,

Attorney for Respondent.